



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 25, 1994

Mr. Charles Karakashian, Jr.  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR94-387

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24726.

The Texas Department of Public Safety (the "DPS") has received a request for information from an attorney representing Maria Castro, an employee of the DPS. Specifically, the requestor seeks the following information:

1. Ms. Castro's file relating to her grievance filed in connection with her non-selection for the position of Drivers' License Examiner in the Plainview, Texas office in 1993/4.
2. A copy of the letter from Captain Tillinghast to Mr. George King on the topic on Ms. Castro's grievance identified in 1, above.
3. A copy of Ms. Castro's test scores awarded in connection with her competition for the job position identified in 1, above.

You advise that the DPS will release the information requested in paragraph number 3. You contend that the DPS may withhold all of the information requested in paragraphs number 1 and number 2 pursuant to section 552.103 of the Government Code. Additionally, you contend that the DPS may withhold portions of the information in paragraphs number 1 and number 2 pursuant to sections 552.102 and 552.111 of the

Government Code. You have identified the information, either through markings or description, that you believe sections 552.102 and 552.111 authorize the DPS to withhold from required public disclosure.

Section 552.103 of the Government Code authorizes a governmental body to withhold from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You have submitted to this office a copy of an internal memorandum dated September 24, 1993, from Ms. Castro to Mr. George King in which Ms. Castro requests an interview to discuss her nonselection for the position of drivers' license examiner in August 1993. Ms. Castro cites four sections of the DPS General Manual that she alleges the DPS violated by her nonselection, including section 07.90.01, which assures that employees will be treated fairly without regard to race, color, sex, national origin, religion, age, or disability. Based upon this memo, you state that "[t]he Department believes it is reasonable to anticipate that Ms. Castro will litigate this matter with the Department over a discrimination issue."

We have reviewed Ms. Castro's internal memorandum to Mr. King. Nowhere does she threaten litigation; she merely requests an interview to discuss her nonselection. Furthermore, from our review of the materials you submitted to this office, the DPS appears to have resolved Ms. Castro's grievance in November 1993, finding that the individuals involved in the process of selecting the drivers' license examiner position for which Ms. Castro applied did not violate the DPS's employment policies and concluding that the DPS would take no further action on the matter. Moreover, you have presented no evidence that Ms. Castro has filed any kind of legal action since November 1993. Consequently, we conclude that you have failed to demonstrate that the requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding; section 552.103 does not authorize the DPS to withhold the requested information from the requestor.

We next consider whether the DPS may withhold from required public disclosure information requested in paragraph number 1, the file related to Ms. Castro's grievance. You state that the DPS will release to the requestor documents that Ms. Castro has written or that were written to her. Some of the documents in the file are internal memoranda to which Ms. Castro was not a party, however, and you claim that the DPS may withhold portions of these pursuant to section 552.111 of the Government Code.

Section 552.111 authorizes a governmental body to withhold from a requestor "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) at 5 this office construed the statutory predecessor to section 552.111 as follows:

We conclude that section [552.111] excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. Section [552.111] does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. . . . [W]e stress that . . . to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. [Footnote deleted.]

You request that this office reexamine our conclusion in Open Records Decision No. 615. We decline to do so. Furthermore, we do not believe that any information in this file is related to the policymaking functions of the DPS. Accordingly, we conclude that the DPS may not withhold any of the requested information requested in paragraph number 1 pursuant to section 552.111 of the Government Code.

Some of the information in the file requested in paragraph number 1 is related to individuals other than Ms. Castro who applied for the position of drivers' license examiner. The information includes test scores. You believe that the public release of this information would constitute a violation of personal privacy. We understand you to claim that section 552.102 requires the DPS to withhold this information from the requestor.

Section 552.102 of the Government Code excepts from required public disclosure information in a personnel file, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Texas Court of Appeals determined, in

*Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.), that information is confidential under section 552.102 if it satisfies the test the Texas Supreme Court set forth in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information deemed confidential by law under section 552.101 of the Government Code. We therefore deem confidential under section 552.102 information (1) that contains highly intimate or embarrassing facts which, if publicized, would be highly objectionable to a reasonable person and (2) that is not of legitimate concern to the public. See *Industrial Found.*, 540 S.W.2d at 685; *Hubert*, 652 S.W.2d at 550.

None of the information in the requested file contains information about an individual that is highly intimate or embarrassing. Furthermore, the public has a legitimate interest in knowing the qualifications of applicants for a position in the public sector. See, e.g., Open Records Decision Nos. 455 (1987) at 5; 441 (1986) at 3; 257 (1980) at 3. We therefore conclude that the information about the applicants is not confidential pursuant to section 552.101 or section 552.102 of the Government Code, and the DPS must release it to the requestor.

Finally, you argue that section 552.111 authorizes the DPS to withhold the memorandum requested in paragraph number 2. Once again, this memorandum relates solely to Ms. Castro's grievance. Any advice and recommendation that may be in the memorandum does not rise to the level of advice and opinion related to the DPS's policymaking functions. The DPS must release the memorandum to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 24726

Enclosures: Submitted documents

cc: Ms. Anita E. Burgess  
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(w/o enclosures)